FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No.410 /2007
(Ashok Tanumal Manwani Vs. Rajabhau Shyamrao Gore & 6 ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.P. Dharmadhikari, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 22nd August, 2007.

Heard Shri Dharmadhikari for the appellant.

The appellant is the original defendant. The predecessor of respondent nos. 1 to 4 had entered into an agreement of sale on 26/4/1972 with late Rupchand, the *Karta* of the joint Hindu family of which the appellant is a member. The sale deed was to be executed on or before 15/10/1972. It is not in dispute that no sale deed was ever executed at any point of time. In the year 1989, the appellant had filed a suit for declaration and injunction bearing Regular Civil Suit NO. 106/1989, pleading that he is in possession of the entire plot in pursuance of the said agreement of sale and the defendants therein/respondent nos. 1 to 4 were trying to disturb his possession. According to the respondent nos. 1 to 4, the possession was not at all

delivered to late Rupchand in pursuance of the agreement of sale and only a portion of the plot on which the shop and the shed stands, was leased out to late Rupchand. The respondent nos. 1 to 4 did not file any counter claim for possession though they claimed that the appellant's possession of the shop and shed was illegal. The trial Court dismissed the suit by the judgment dated 7/10/2005 and held that the appellant was not entitled for injunction. An appeal filed against the judgment and decree passed by the trial Court, was also dismissed. In this background, the present civil suit was filed by the respondent nos. 1 to 4 on 20/3/2002, claiming that the possession of the appellant was declared illegal and, therefore, they are entitled to a decree of possession of the suit shop. The trial Court decreed the suit filed by the respondents. First appellate Court dismissed the appeal filed by the appellant against the judgment and decree passed by the trial Court.

The findings recorded by both the Courts are based on a proper appreciation of the material evidence on record. Both the Courts considered the judgment and decree passed in Regular Civil Suit No. 106/1989, which had attained finality. The Courts had held in the earlier suit that the possession of the present appellant was illegal. Consequently, the trial and the appellate Court

decreed the suit of the respondent nos. 1 to 4. None of the questions of law stated in the memorandum of second appeal are substantial questions of law.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP